

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INQUIRY INTO THE STATE)	CASE NO.
UNIVERSAL SERVICE FUND)	2016-00059

ORDER

On March 10, 2017, the Commission issued an Order in this case that, *inter alia*, determined that support from the Kentucky Universal Service Fund (“KUSF”) for Lifeline service provided after April 30, 2017, would be limited to landline providers only. The Commission based its decision, in part, on protecting customers who rely upon landline Lifeline service from increasing rates due to a decrease and ultimate elimination of federal subsidies for voice-only (primarily landline) Lifeline service, as well as the Commission’s desire to avoid further increases to the surcharge that funds the KUSF. The Commission ordered that the support for landline Lifeline service increase to a maximum of \$7.50, increasing on a cent-for-cent basis and on the same timeline as the decrease of federal support for Lifeline service.

On March 31, 2017, Airvoice Wireless, American Broadband and Telecommunications Company, LLC, Budget Wireless, i-wireless, LLC, Ready Wireless, SI Wireless, LLC, and Telrite Corporation (collectively “Wireless Carriers”) filed a joint motion for reconsideration with the Commission. TracFone Wireless, Inc. (“TracFone”) and BellSouth Telecommunications, LLC d/b/a AT&T Kentucky (“AT&T Kentucky”) each filed individual motions for reconsideration on April 3, 2017. The Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention, (“Attorney General”)

filed comments in support of the various petitions for reconsideration. On April 3, 2017, CTIA – The Wireless Association (“CTIA”) filed its comments opposing the Commission's Order. CTIA, however, is not a party to this proceeding and the Commission will not address its comments.

The petitions for reconsideration share some common arguments. First, several of the petitioners argue that the Commission's decision impermissibly discriminates on the basis of technology in violation of federal telecommunications law. The petitioners argue that the Commission Order violates: 1) 47 USC § 253(b), which provides that states may impose requirements that preserve and advance universal service on a “competitively neutral basis”; and 2) 47 USC § 254(f), which provides that a state may adopt regulations to preserve and advance universal service that are not inconsistent with the Federal Communication Commission's (“FCC”) universal service rules.¹ Second, the various petitions also contend that the record of evidence in this case does not support the Commission's Order and that the Order is unsupported because the Commission did not inform the parties that limiting support only to landline was a possibility.

The Wireless Carriers, in their joint motion, also argue, *inter alia*, that: 1) eliminating support for wireless Lifeline service conflicts with competitive neutrality principles applied to the telecommunications relay services and Telecommunications Access Program programs; 2) if external costs for landline providers, such as the reduction in federal Lifeline support, are considered, then the Commission should consider the external fees, such as 911 fees, that wireless carriers pay that are defrayed

¹ FCC rules define competitive neutrality in the context of universal service support as “neither unfairly favor nor disfavor one technology over another.” See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8876 (rel. May 8, 1997), paragraph 47.

by KUSF support so that wireless Lifeline customers can receive free service; and 3) a sudden cut of state support will harm Kentucky's poor, and at a bare minimum the Commission should extend the transition deadlines while appeals may be taken. The Wireless Carriers also assert that Senate Bill 10, signed into law by the Governor subsequent to the issuance of the March 10, 2017 Order, removes Commission authority over the provision of landline service of AT&T Kentucky.

In addition to asserting that the Commission cannot discriminate based upon technology, TracFone states that limiting Lifeline support to landline is bad public policy. TracFone proposes to reopen the case to determine if the KUSF funding issues can be addressed by reducing the level of KUSF support by half to \$1.75. TracFone states that this would allow carriers to continue to provide additional services to Kentucky Lifeline customers in excess of federal minimums.

The Attorney General in his comments states that the Commission's concern for the elderly and rural customers has not been briefed in any significant way by the parties to the case. The Attorney General states that he is concerned that the Commission's Order will have a negative effect on the vulnerable populations the KUSF is designed to protect, especially given the continuing migration from landline to wireless service. The Attorney General also states that he welcomes the opportunity to provide new and relevant information regarding the Commission's stated concerns with regard to rural and elderly customers.

DISCUSSION

The Commission's March 10, 2017 Order does not unfairly favor one type of technology over another. In fact, the opposite is the case. As the Commission previously

noted in its March 10, 2017 Order, the FCC, in its *Lifeline Modernization Order*,² will begin to decrease federal Lifeline support for voice-only carriers, which are primarily landline carriers, beginning on December 1, 2019, and the level of support for voice-only carriers will be reduced to zero on and after December 1, 2021. Meanwhile, wireless carriers that provide Lifeline service will continue to receive \$9.25 per customer in monthly federal Lifeline support. The Commission's decision to increase KUSF support only to landline carriers that provide Lifeline service is designed merely to offset the loss of federal Lifeline support, not to provide a competitive advantage. Ultimately wireless Lifeline providers will be receiving a larger subsidy from the federal universal service fund than landline Lifeline providers will be receiving from the KUSF. Given that wireless providers will be receiving more money in subsidies than landline providers, the Commission's Order provides no competitive advantage to landline carriers over wireless carriers. If anything, the March 10, 2017 Order addresses an inequity created by the FCC in its *Lifeline Modernization Order* in removing subsidies for landline Lifeline providers. While the FCC may have modernized Lifeline, the Commission intends to ensure that Kentucky landline consumers are not unfairly disadvantaged.

The Commission notes that the FCC, in the Lifeline Modernization Order, specifically avoided preempting states' Lifeline programs. The FCC stated that "[n]othing in this Order preempts states' ability to develop and manage their own state Lifeline programs."³ In discussing the states' ongoing role in providing their own Lifeline

² *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No 09-197; *Connect America Fund*, WC Docket No. 10-90, *Third Report and Order, Further Report and Order, and Order on Reconsideration* (Rel. Apr. 27, 2016). ("*Lifeline Modernization Order*") at ¶ 188–196.

³ Lifeline Modernization Order at ¶ 286.

programs, the FCC “applaud[s] these state programs for devoting resources designed to help close the affordability gap for communications services.”⁴ The FCC continues, stating that, “[n]othing in this Order preempts states’ ability to create or administer such state-based Lifeline programs that include state funding for Lifeline support to support voice service States that do maintain state Lifeline programs may therefore enact their own rules for the administration of those programs.”⁵ The FCC’s own language supports the Commission’s decisions to manage its own state Lifeline program, and to develop the rules that govern it. Accordingly, we find no basis to grant rehearing based upon the argument that the Commission’s March 10, 2017 Order is not competitively neutral or otherwise violates federal law.

The Commission’s March 10, 2017 Order is also supported by the record. Several petitioners commented that, prior to the March 10, 2017 Order, the Commission did not indicate that limiting KUSF support to landlines only was a possibility, and that this omission is fatal to the March 10, 2017 Order. The Commission disagrees. The Commission initiated this proceeding on February 1, 2016, and stated that among the issues to be addressed were “the need for continuing the KUSF; future funding levels of KUSF; [and] the possibility of reducing the amount of KUSF support on a permanent basis”⁶ Thus, from the start, all parties were on notice that the KUSF could cease and/or KUSF funding levels might be reduced. The Commission opted to cease the program for

⁴ *Id.* at ¶ 287.

⁵ *Id.* (Emphasis added.) (Citations omitted.)

⁶ PSC Case No. 2016-00059, *An Inquiry In the State Universal Service Fund*, (Ky. PSC Feb. 1, 2016) at 1.

some carriers and adjusted the level of support for others. Accordingly, we find no basis to grant rehearing based upon this argument.

The Attorney General and the Wireless Carriers both note that Senate Bill 10 was passed by both houses of the General Assembly on March 8, 2017, and signed by the Governor on March 20, 2017, ten days after the Commission entered its March 10, 2017 Order. Senate Bill 10⁷ amends KRS 278.5435 and provides that, on and after September 1, 2017, the Commission will not have jurisdiction over the basic local exchange service for the modifying carriers such as AT&T Kentucky. The Attorney General argues that the enactment of Senate Bill 10 changed the telecommunications landscape in ways that the Commission could not have considered during the pendency of this case.

The Commission notes that the carriers that could be impacted by Senate Bill 10 are designated as eligible telecommunications carriers for the purpose of receiving Lifeline support and have the responsibilities attendant to that designation under federal law.⁸ However, the Commission finds the enactment of Senate Bill 10 has raised sufficient questions to warrant additional proceedings to consider the impact of Senate Bill 10 on the Commission's March 10, 2017 Order, especially with regard to the Commission's jurisdiction over the wireline providers of Lifeline. The Commission also finds that the March 10, 2017 Order should be stayed until the Commission completes a review of the impact of Senate Bill 10 and issues a subsequent Order on the merits of this issue.

⁷ 2017 Ky. Acts Ch. 43.

⁸ 47 U.S.C. § 214(e).

IT IS THEREFORE ORDERED that:

1. Rehearing is granted solely to consider the impact of the enactment of Senate Bill 10 on the Commission's decision to limit KUSF support to landline services only.
2. Within 20 days of the date of this Order, parties shall file with the Commission, in the form of testimony, comments, or briefs, their arguments regarding the impact of Senate Bill 10 on the Commission's Order.
3. The Commission's March 10, 2017 Order is stayed pending further Order of this Commission.

By the Commission



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